Madison Branch Management, Inc. *and* United Mine Workers of America, AFL–CIO. Case 9–CA–32689

October 16, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

Upon a charge filed by the Union on March 6, 1995, the General Counsel of the National Labor Relations Board issued a complaint on April 11, 1995, against Madison Branch Management, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 11, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On September 13, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 18, 1995, notified the Respondent that unless an answer were received by August 25, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has operated surface coal mines in Logan County, West Virginia. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its operations, sold and shipped coal valued in excess of $50,000 from its West Virginia facilities directly to customers located outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of the Respondent engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by the Respondent), repair and maintenance work normally performed at the mine site or at a central shop[s] of the Respondent and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by the Respondent, excluding all coal inspectors, weigh bosses at mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

Since 1991, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit and since that date has been recognized as such representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from December 16, 1993, to August 1, 1998. At all times since 1991, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

From September 7 to at least December 1, 1994, the Respondent failed to maintain health care benefits for the unit employees as required by the collective-bargaining agreement described above. This subject re-

[1] On August 25, 1995, the Region received a letter from the Respondent's trustee in bankruptcy stating that the Respondent had filed for bankruptcy and is no longer in business. It is well established, however, that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to process an unfair labor practice case to its final disposition. Board proceedings fall within the exception to the automatic stay provisions for proceedings by a governmental unit to enforce its police or regulatory powers. *Phoenix Co.*, 274 NLRB 995 (1985).

lates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without the Union's consent or affording it an opportunity to bargain with respect to this conduct and the effects of this conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we will order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, from September 7 to at least December 1, 1994, to maintain contractually required health care benefits for its unit employees, we will order the Respondent to restore the employees' health care benefits and make the employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2]

ORDER

The National Labor Relations Board orders that the Respondent, Madison Branch Management, Inc., Man, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to maintain health care benefits for the unit employees as required by the collective-bargaining agreement. The unit includes the following employees:

> All employees of the Respondent engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by the Respondent), repair and maintenance work normally performed at the mine site or at a central shop[s] of the Respondent and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by the Respondent, excluding all coal inspectors, weigh bosses at mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore the unit employees' health care benefits and make them whole by reimbursing them for any expenses ensuing from the Respondent's unlawful conduct, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Mail copies of the attached notice marked "Appendix"[3] to all unit employees. Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be mailed by the Respondent immediately upon receipt.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. October 16, 1995

William B. Gould IV,	Chairman
Charles I. Cohen,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] Because the Respondent appears to be no longer in business (see fn. 1, supra), we shall require the Respondent to mail copies of the notice to the unit employees. See, e.g., *Print-Quic*, 262 NLRB 857, 862 fn. 19 (1982).

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail to maintain health care benefits for our unit employees as required by the collective-bargaining agreement. The unit includes the following employees:

> All employees of the Employer engaged in the production of coal, including removal of overburden and coal waste, preparation, processing, and cleaning of coal and transportation of coal (except by waterway or rail not owned by us), repair and maintenance work normally performed at the mine site or at a central shop[s] of the Employer and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by us, excluding all coal inspectors, weigh bosses at mines where men are paid by ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL restore our unit employees' health care benefits and make them whole by reimbursing them for any expenses ensuing from our unlawful conduct, as set forth in a decision of the National Labor Relations Board.

MADISON BRANCH MANAGEMENT, INC.